

United States District Court  
Southern District of New York

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Alpha Capital Anstalt and  
Osher Capital Partners, LLC,

Plaintiffs,

Rule 56.1 Statement

v.

15 CV 5443 (VM)(GWG)

Oxysure Systems, Inc. and  
Julian Ross,

Defendants.

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Plaintiffs Alpha Capital Anstalt (“Alpha Capital”) and Osher Capital Partners, LLC (“Osher”) submit the following statement of uncontested material facts which entitle Plaintiffs to the relief they seek. Page citations are to Plaintiffs’ Memorandum of Law. The facts set forth therein have been affirmed to be true by Ari Kluger and Kenneth A. Zitter, as set forth in their respective Affirmations.

1. In December 2013, Alpha Capital purchased 675 shares of Oxysure’s Series B Convertible Preferred Stock (the “Stock”) for \$675,000 (p. 3).
2. In December 2014, Alpha Capital purchased an additional 400 shares of Stock for \$400,000 (p. 3).
3. Alpha Capital currently holds 575 shares of Stock (p. 3).

4. In December 2014, Osher purchased 125 shares of Stock for \$125,000, which Osher currently holds (p. 3)..
5. As holders of the Stock, both Alpha Capital and Osher had the right, from time to time, to convert all or any portion of their Stock into shares of Oxysure common stock (p. 3; Exhibit A to Zitter Affirmation).
6. In ¶4.13 of the Securities Purchase Agreement (“SPA”) Oxysure agreed that it would not issue variable rate securities while Alpha Capital and Osher continued to own the Stock (p. 3; Exhibit A to Zitter Affirmation).
7. In ¶4.13 of the SPA Oxysure agreed that it would not issue any common stock at a price less than the greater of the Stock Conversion Price and the Exercise Price of the Warrants (p. 3-4; Exhibit A to Zitter Affirmation.)
8. Since December 2014, the exercise price of the warrants has always been \$1.20 per share (p. 4; Exhibit B to Zitter Affirmation).
9. The SPA also required that Oxysure timely file all reports required to be filed pursuant to the Exchange Act, even if Oxysure was not then subject to the reporting requirements of the Exchange Act (p. 5; Exhibit A to Zitter Affirmation).

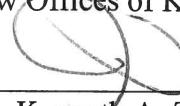
10. Oxysure violated the SPA by issuing three convertible notes in the first quarter of 2015 (p. 5; Exhibit D to Zitter Affirmation).
11. Oxysure violated the SPA by issuing Series C, D and E convertible preferred stock on June 30, 2015 (p. 6; Exhibit E to Zitter Affirmation).
12. Oxysure violated the SPA by failing to file the Form 10K which it was obligated to file by April 15, 2016 (p. 7).
13. Oxysure's issuance of the variable rate securities constitutes a Triggering Event as defined in the Certificate of Rights and Designation of the Series B Convertible Preferred Stock ("B COD") (p. 8-9, 11; Exhibit H to Zitter Affirmation).
14. Oxysure's failure to file its Form 10K is a Triggering Event as defined in the B COD (p. 10-11; Exhibit H to Zitter Affirmation).
15. Upon the occurrence of a Triggering Event, the parties specifically negotiated and agreed that to remedy a Triggering Event, each Plaintiff would be entitled to redeem its Stock for shares of Oxysure common stock based upon an agreed formula (p. 8).

16. That agreement was important to Plaintiffs in order to, among other reasons, avoid, in the event of Oxysure's default, the difficulties and expense involved in litigating, proving damages and enforcing any judgment (p. 8).
17. Without the availability of that remedy, Plaintiffs would not have purchased the Stock (p. 8).
18. On April 19, 2016, Osher demanded that Oxysure redeem its Stock (p. 12).
19. Based on the formula set forth in the B COD, Oxysure is obligated to deliver to Osher at least 6,028,519 shares of freely trading Oxysure common stock (p. 12; Exhibit K to Zitter Affirmation).
20. The B COD, however, limits the number of common shares which Oxysure may issue to Osher at any one time to 4.99% of Oxysure's then outstanding number of common shares - the Beneficial Ownership Limitation, as defined therein (p. 12; Exhibit H to Zitter Affirmation).
21. Based upon Oxysure's most recent publicly filed share information, Oxysure, as of February 19, 2016, had 40,405,496 shares outstanding (p. 12; Exhibit L to Zitter Affirmation).
22. 4.99% of those outstanding shares is. 2,016,234 (p. 13).

23. Because Oxysure is no longer required by statute to file periodic public reports, the number of Oxysure shares outstanding will no longer be publicly available (p. 13).
24. Because of the Beneficial Ownership Limitation, Osher still retains the Stock to the extent that it has not been redeemed (p. 13; Exhibit H to Zitter Affirmation, ¶10(b)).
25. Osher is entitled to redeem its remaining Stock based upon the price of Oxysure common stock obtaining at the time of such redemption (p. 13).

Dated: New York, New York  
April 21, 2016

Law Offices of Kenneth A. Zitter

By 

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